

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MARCUS D. WINSTON,

Petitioner,

v.

3:06-cr-012

3:12-cv-379

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER

Petitioner has filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. There is also pending a motion to recall the mandate pursuant to Rule 60(b)(5). It is not clear what mandate petitioner is referring to and the motion to recall [Court File No. 279] is **DENIED** as **MOOT**.

Petitioner was convicted of conspiracy to distribute and possess with intent to distribute cocaine hydrochloride and five grams or more of cocaine base. He previously filed a § 2255 motion attacking the same conviction, which was denied on the merits. *Marcus D. Winston v. United States*, Civil Action No. 3:08-cv-013 (E.D. Tenn. Oct. 20, 2011) (Judgment Order). In accordance with the "Antiterrorism and Effective Death Penalty Act of 1996," effective April 24, 1996, the petitioner cannot file a second or successive § 2255 motion in the district court until he has moved in the United States Court of Appeals for the

Sixth Circuit for an order authorizing the district court to consider the motion. This court has not received an order from the Sixth Circuit authorizing the court to consider the pending motion. Accordingly, the Clerk is **DIRECTED** to transfer this action to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631. *See In re Sims*, 111 F.3d 45 (6th Cir. 1997).

ENTER:

s/ Leon Jordan
United States District Judge